

Drinking Water State Revolving Fund Loan Program

**Chapter 246-296 WAC
Effective October 24, 2001**

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*Washington State
Public Works Board*

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WAC 246-296-010 Purpose and scope.

The purpose of this chapter is to:

- (1) Define regulatory requirements for the provision of financial assistance to public water systems provided by the drinking water state revolving fund (DWSRF);
- (2) Ensure the state's public drinking water supplies are safe and reliable;
- (3) Ensure funding is available to eligible public water systems to finance infrastructure costs associated with providing safe and reliable drinking water;
- (4) Ensure the department of health utilizes a portion of the capitalization grant for set-aside activities in accordance with the federal rule;
- (5) Ensure public water systems receiving funding are properly operated, managed, and maintained consistent with DWSRF capacity requirements;
- (6) Ensure permanent institutions exist to manage funds for public water system needs; and
- (7) Define the responsibilities of the department of health (DOH); the public works board (board); and the board's agent, the department of community, trade and economic development (CTED) for administering the DWSRF loan program.

[Statutory Authority: RCW 70.119A.170. 01-21-137, § 246-296-010, filed 10/24/01, effective 11/24/01.]

WAC 246-296-020 Definitions.

"Act" means the Federal Safe Drinking Water Act (SDWA).

"Application" means a DWSRF loan application submitted to DOH for DWSRF assistance.

"Application package" means DWSRF loan application form(s), requirements, terms of assistance, and related information jointly developed and published by DOH, the board, and the board's agent, CTED.

"Binding commitment" means a legal obligation by the state to an assistance recipient that defines the terms and the timing for assistance under this chapter.

"Board" means the state of Washington public works board.

"Borrower" means the entity or individual that has the legal and financial responsibility for the loan.

"Certification/certify" means documentation signed by the loan recipient that specific requirements or standards have been or will be met.

"Change orders" means a formal document that alters specific conditions of the original construction contract document including a change in the scope of work, contract price, construction methods, construction schedule, change in location, size, capacity, or quality of major equipment.

"Community water system" means any Group A public water system that regularly serves fifteen or more year-round residential connections, or twenty-five or more year-round residents for one hundred eighty or more days per year.

"Construction documents" means construction documents developed and approved under WAC 246-290-120.

"Construction completion report" means a form provided by DOH to the applicant required to be completed for each specific construction project to document project construction in accordance with chapter 246-290 WAC and general standards of engineering practice. The completed form must be stamped with an engineer's seal, signed, and dated by a professional engineer.

"Cross-cutting authorities" means federal or state laws and authorities that apply to projects or activities receiving federal or state assistance.

"CTED" means the department of community, trade and economic development.

"Debt obligation" means a legal obligation or liability to pay something to someone else.

"Default" means failure to meet a financial obligation such as a loan payment.

"Disadvantaged community" means the service area of a public water system where at least fifty-one percent of the customers are at or below eighty percent of the county median household income as defined annually by the Federal Department of Housing and Urban Development.

"Distressed county" means a county that is designated by the Washington state employment security department as distressed.

"DOH" means the department of health.

"Drinking water state revolving fund (DWSRF)" means the program established to administer the federal funds and other funds deposited in the account authorized to finance water system infrastructure, drinking water program activities, and to meet the applicable requirements of RCW 70.119A.170.

"Eligible system" means Group A community water systems, both privately and publicly owned, and nonprofit Group A noncommunity water systems.

"EPA" means the United States Environmental Protection Agency.

"Group A system" means a public water system that regularly serves fifteen or more residential connections, or twenty-five or more people per day for sixty or more days per year.

"Group B system" means a public water system that serves less than fifteen residential connections and less than twenty-five people per day, or serves twenty-five or more people per day for sixty or fewer days per year.

"Individual water supply system" means any water system that is not subject to the state board of health drinking water regulations, chapter 246-290 WAC; or chapter 246-291 WAC, providing water to one single-family residence, or four or fewer connections all of which serve residences on the same farm.

"Intended use plan (IUP)" means the federally required document prepared each year by the state which identifies the intended uses of the funds in the DWSRF and describes how those uses support the goals of the DWSRF.

"HUD" means the United States Department of Housing and Urban Development.

"Loan" means an agreement between the DWSRF and the assistance recipient through which the DWSRF provides funds for eligible assistance and the recipient agrees to repay the principle sum to the DWSRF.

"Multiple benefit" means project improvements that address more than one type of health risk.

"Noncommunity water system" means a Group A public water system that is not a community water system.

"Nonprofit organization" means a system that has a federal tax exempt status identification number.

"Nontransient noncommunity system" means a Group A noncommunity water system that serves twenty-five or more of the same people per day for one hundred eighty or more days per year.

"Owner" means any agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, person, or any other entity that holds as property a public water system.

"Project report" means a project report developed and approved under chapter 246-290 WAC.

"Public water system" means any system, providing water for human consumption through pipes or other constructed conveyances excluding systems serving only one single-family residence and systems with four or fewer connections all of which serve residences on the same farm.

"Purveyor" means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person, or other entity owning or operating a public water system. Purveyor also means the authorized agents of such entities.

"Regional benefit" means project improvements that affect more than one public water system.

"Restructuring" means changing system operation, management and/or ownership, including, but not limited to:

- (1) Mergers;
- (2) Voluntary transfer of ownership; or
- (3) Receivership (involuntary transfer of operation and/or ownership).

"Safe Drinking Water Act (SDWA)" means the Federal Safe Drinking Water Act, including all amendments.

"Satellite management agency (SMA)" means a person or entity that is approved by the department of health to own or operate public water systems on a regional or countywide basis, without the necessity for a physical connection between such systems. SMA's are regulated under chapter 246-295 WAC.

"Set-aside" means the use of a portion of DWSRF funds allotted to the state for a range of specific SDWA-related activities as authorized in Section 1452 of the SDWA, to fund new programs, and other drinking water program activities.

"Significant noncomplier (SNC)" means a water system that is violating or has violated department rules and the violations may create or have created an imminent or a significant risk to human health.

"Small water system management program (SWSMP)" means a small water system management program developed and approved under WAC 246-290-105.

"State environmental review process (SERP)" means the environmental review process conducted on all DWSRF projects that ensures compliance with state and federal environmental review through a National Environmental Policy Act (NEPA)-like process.

"State match" means funds equaling at least twenty percent of the amount of the federal capitalization grants the state must deposit into the DWSRF loan fund including the necessary match for set-asides.

"Surface water" means a body of water open to the atmosphere and subject to surface runoff.

"System capacity" means the system's operational, technical, managerial and financial capability to achieve and maintain compliance with all relevant local, state, and federal plans and regulations.

"Transfer of ownership" means to convey ownership of a water system from one person or entity to another.

"Transient noncommunity system" means a Group A noncommunity water system that serves:

- (1) Twenty-five or more different people per day during sixty or more days per year;
- (2) Twenty-five or more of the same people per day for less than one hundred eighty days per year and during more than fifty-nine days per year; or
- (3) One thousand or more people for two or more consecutive days.

"Water facilities inventory form (WFI)" means the DOH form summarizing each public water system's characteristics.

"Water right" means a permit, claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

"Water system plan (WSP)" means a water system plan developed and approved under WAC 246-290-100.

[Statutory Authority: RCW 70.119A.170. 01-21-137, § 246-296-020, filed 10/24/01, effective 11/24/01.]

WAC 246-296-030 Administration.

- (1) DOH, the board, and CTED jointly administer the DWSRF.
- (2) DOH is responsible for:
 - (a) Administering the federal DWSRF;
 - (b) Determining and managing use of DWSRF set-aside funds for drinking water program regulatory and technical assistance purposes as authorized under the SDWA; and
 - (c) Developing prioritized lists of projects for DWSRF financial assistance.
- (3) The board is responsible for the final selection of projects to receive DWSRF financial assistance.
- (4) CTED, the board's administrative agent, is responsible for managing DWSRF project loans.

[Statutory Authority: RCW 70.119A.170. 01-21-137, § 246-296-030, filed 10/24/01, effective 11/24/01.]

WAC 246-296-040 Use of funds.

The DWSRF may be used for the following purposes:

- (1) To accept and retain funds from capitalization grants provided by the federal government, state matching funds appropriated in accordance with RCW 70.119A.170, payments of principal and interest, fees, and any other funds earned and deposited;
- (2) To finance loans for the planning, design, and/or construction costs of water system infrastructure needed to facilitate compliance with the federal, state, and local drinking water standards;
- (3) To finance the reasonable costs incurred by DOH, the board and CTED in the administration of the program; or
- (4) To fund set-aside activities authorized in categories (b) through (e) of Section 35.3535 of the SDWA including (b) program administration and technical assistance, (c) small systems technical assistance, (d) state program management, and (e) local assistance and other state programs.

[Statutory Authority: RCW 70.119A.170. 01-21-137, § 246-296-040, filed 10/24/01, effective 11/24/01.]

WAC 246-296-050 Establishing terms of assistance.

DWSRF loans shall be provided at or below market rate interest levels. Loans may be made for the useful life of the improvement or for a maximum of twenty years. The assistance recipient shall begin repayment of the principal and interest no later than one year after project completion. A project is complete when operations are initiated or are capable of being initiated. Disadvantaged communities may receive a loan for up to thirty years at an interest rate established at or below market interest rates as long as the loan does not exceed the useful life of the project. The board is responsible for establishing terms that secure the debt and maintain a financially sound revolving loan fund in perpetuity. Specific rates and contract terms shall be published in the annual application package.

[Statutory Authority: RCW 70.119A.170. 01-21-137, § 246-296-050, filed 10/24/01, effective 11/24/01.]

WAC 246-296-060 Establishing loan fee, loan fee account, and loan fee uses.

The board shall establish the terms of a loan fee and assess the fee to each project loan. The loan fee amount is to be established on an annual basis to ensure adequate funding is available to maintain administration of the DWSRF in perpetuity. The loan fee is eligible to be covered by the loan. The amount of the loan fee shall be published in the annual application package. Loan fees shall be deposited into and retained in a dedicated loan fee account and shall only be used for program administration activities unless the board and DOH jointly determine that the loan fee account balance exceeds program administration needs, then a portion of or all of the funds may be transferred to the project loan account to be used for project loans. Information on the loan fee account, including the current fee and account balance, shall be included in the intended use plan. The board and DOH are responsible for jointly determining the amount of the loan fee account funds to be used for current and future program administration.

[Statutory Authority: RCW 70.119A.170. 01-21-137, § 246-296-060, filed 10/24/01, effective 11/24/01.]

WAC 246-296-070 Projects and project-related costs eligible for assistance from the fund.

- (1) Projects and project-related costs eligible for assistance from the DWSRF program include those that:
 - (a) Address violation of applicable federal, state, and local drinking water standards;
 - (b) Prevent future violations of applicable federal, state, and local drinking water standards;
or
 - (c) Replace aging infrastructure if needed to maintain compliance or further public health protection goals of applicable federal, state, and local drinking water standards;
- (2) Specific projects and project-related costs eligible for assistance include those that:
 - (a) Are treatment, transmission, distribution, source, or storage projects;
 - (b) Consolidate water supplies;
 - (c) Retroactively finance municipal projects that are for treatment of surface water, GWI (ground water under the influence of surface water), volatile organic chemicals, inorganic chemicals, or are projects that are required by department or EPA order;
 - (d) Acquire real property if it is integral to a project to meet or maintain compliance or further public health protection and the property is being acquired from a willing seller;
 - (e) Finance planning or design costs directly related to DWSRF eligible projects;
 - (f) Finance costs incurred by publicly owned systems associated with restructuring of systems;

(g) Acquire, build, or rehabilitate reservoirs, including clear wells, that are part of the treatment process and located on the property where the treatment facility is located; or

(h) Acquire, build, or rehabilitate distribution reservoirs.

[Statutory Authority: RCW 70.119A.170. 01-21-137, § 246-296-070, filed 10/24/01, effective 11/24/01.]

WAC 246-296-080 Projects and costs not eligible for assistance from the fund.

Projects and project-related costs that are not eligible for assistance from the DWSRF program include:

- (1) Acquisition, construction, or rehabilitation of dams or raw water reservoirs;
- (2) Acquisition of water rights, except if the water rights are owned by a system that is being acquired through consolidation;
- (3) Laboratory fees for monitoring;
- (4) Operation and maintenance expenses;
- (5) Projects needed primarily for fire protection;
- (6) Projects needed primarily to serve future population growth;
- (7) Costs incurred by privately owned systems associated with restructuring systems;
- (8) Projects that have received assistance from the national set-aside for Indian tribes and Alaska native villages under Section 1452(i) of the SDWA;
- (9) Projects for an individual water supply system or a Group B system unless the system is being consolidated into a Group A system. Consolidation may be accomplished by extending a water line from an existing Group A system or by creating a new Group A system under WAC [246-296-120](#); or
- (10) Projects that are solely for the purpose of installing service meters.

[Statutory Authority: RCW 70.119A.170. 01-21-137, § 246-296-080, filed 10/24/01, effective 11/24/01.]

WAC 246-296-090 Water system eligibility requirements.

(1) Systems eligible for assistance from the fund include:

(a) Publicly and privately owned community water systems, excluding those systems not eligible for assistance from the fund under WAC [246-296-100](#); and

(b) Noncommunity public water systems owned by a nonprofit organization.

(2) Systems not eligible for assistance from the fund include:

- (a) Noncommunity public water systems owned by a for-profit organization;
- (b) State-owned water systems;
- (c) Federally owned water systems; or
- (d) Systems lacking the technical, financial, and managerial capability to ensure compliance with all applicable federal, state, and local drinking water standards, unless the assistance will ensure compliance and the owners and operators of the system(s) agree to undertake feasible and appropriate changes in operation and management to ensure compliance in the future.

[Statutory Authority: RCW 70.119A.170. 01-21-137, § 246-296-090, filed 10/24/01, effective 11/24/01.]

WAC 246-296-100 Minimum requirements to be eligible for assistance from the fund.

To be eligible for assistance from the fund, applicants are responsible for:

- (1) Demonstrating that the water system has the technical, financial, and managerial capability to ensure compliance with applicable federal, state, and local drinking water standards, unless the assistance will ensure compliance and the owners, managers, and operators of the systems agree to undertake feasible changes to ensure compliance over the long term;
- (2) Having a DOH-approved WSP or SWSMP containing the proposed project and addressing any capacity-related deficiencies prior to execution of a loan contract;
- (3) Being in compliance with applicable federal, state, and local drinking water standards or variance unless the use of the DWSRF assistance will ensure compliance;
- (4) Being in compliance with DOH orders;
- (5) Having a source meter on each source or installing source meters as a part of the project;
- (6) Having meters on all services or installing meters on all services as part of the project unless one of the following exceptions apply:
 - (a) The project is for a transient noncommunity water system;
 - (b) The project is for a mobile home park with a master meter;
 - (c) The project is for an apartment building or complex with a master meter; or

- (d) The department determines that the cost of the meters is prohibitive for the DWSRF project as a whole and waiving the meter requirement is necessary to move the project forward and promote priority public health issues;
- (7) Ensuring no outstanding penalties are owed to DOH unless an appeal of the imposition of those penalties is pending;
- (8) Demonstrating that the project conforms to state water rights laws; and
- (9) Assuring that the project is consistent with local land use plans and policies.

[Statutory Authority: RCW 70.119A.170. 01-21-137, § 246-296-100, filed 10/24/01, effective 11/24/01.]

WAC 246-296-110 Requirements for using DWSRF to create a new Group A water system.

Projects that create a new water system are eligible for assistance from the fund if:

- (1) Upon completion of the project, the system conforms to the rules regarding Group A community water systems promulgated under chapter 246-290 WAC;
- (2) The project addresses existing public health problems with serious risks caused by unsafe drinking water;
- (3) The project is limited in scope to the specific geographic area affected by contamination and the project is for the purpose of resolving existing public health problems associated with individual wells or surface water sources, or the project is limited in scope to the service area of the systems being consolidated and the project is for the purpose of creating a new regional system by consolidating existing water systems;
- (4) The applicant gives at least sixty days notice to the public and potentially affected parties. At a minimum, notice must include posting of a legal notice in the local newspaper;
- (5) The applicant has considered alternative solutions to address the problem;
- (6) The project is a cost-effective solution to the public health problem; and
- (7) The project is to protect public health and not solely to accommodate growth.

[Statutory Authority: RCW 70.119A.170. 01-21-137, § 246-296-110, filed 10/24/01, effective 11/24/01.]

WAC 246-296-120 Annual loan application responsibilities.

Annual loan application responsibilities are established as follows:

- (1) Applicants shall develop and submit a DWSRF assistance application to DOH on or before the due date defined in the application package.

(2) DOH responsibilities are to:

- (a) Determine the eligibility of the project;
- (b) Rank the project using the ranking criteria established under WAC [246-296-130](#);
- (c) Develop a prioritized list of projects eligible for assistance;
- (d) Develop an intended use plan by:
 - (i) Publishing a draft intended use plan for public review and comment for a period of thirty days; and
 - (ii) Amending the plan, if necessary, after considering the comments received;
- (e) Submit a capitalization grant application, including the final intended use plan, to EPA for review and approval;
- (f) Revise the intended use plan if EPA requests changes; and
- (g) If necessary, provide for administrative review and dispute resolution in accordance with WAC [246-296-160](#).

(3) The board's responsibilities are to:

- (a) Determine the financial capability and readiness to proceed of each applicant with a project on the prioritized list using the risk assessment criteria established under WAC [246-296-140](#);
- (b) Make the final selection of projects to receive assistance from the fund in accordance with the criteria established under WAC [246-296-140](#); and
- (c) If necessary, provide for administrative review and dispute resolution in accordance with WAC [246-296-160](#).

[Statutory Authority: RCW 70.119A.170. 01-21-137, § 246-296-120, filed 10/24/01, effective 11/24/01.]

WAC 246-296-130 Project priority ranking criteria.

(1) The following criteria are considered when prioritizing projects for DWSRF financial assistance:

- (a) Priority criteria:
 - (i) Type and significance of public health risk to be addressed;
 - (ii) Compliance status and need to bring the system into compliance with federal, state, and local drinking water standards; and

- (iii) Affordability on a per household basis for community water systems.

(b) Supporting criteria:

- (i) Type of project;
 - (ii) Restructuring;
 - (iii) Regional benefit;
 - (iv) Multiple benefit;
 - (v) Consistency with the Growth Management Act;
 - (vi) Installation of service meters on existing services not currently metered; and
 - (vii) Size of population affected by the project.
- (2) Values for these criteria shall be developed annually by DOH to ensure projects that resolve the most significant health risks receive the highest values. The values shall be made available to the public in advance of the application cycle and shall be published in the DWSRF application package.

[Statutory Authority: RCW 70.119A.170. 01-21-137, § 246-296-130, filed 10/24/01, effective 11/24/01.]

WAC 246-296-140 Final project selection criteria.

The board shall, at a minimum, consider the following in assessing the risk associated with the application:

- (1) Ability to repay;
- (2) Ability to provide adequate security in case of default; and
- (3) Readiness to proceed or the ability of the applicant to promptly commence the project.

[Statutory Authority: RCW 70.119A.170. 01-21-137, § 246-296-140, filed 10/24/01, effective 11/24/01.]

WAC 246-296-150 Loan conditions.

- (1) Borrowers must comply with applicable laws, regulations, and requirements.
- (2) Loans shall include conditions to ensure compliance with the following:
 - (a) All applicable federal, state, and local laws, orders, regulations, and permits; including, but not limited to, procurement, discrimination, labor, job safety, and drug-free environments, state and federal and women-owned business regulations. A current list of cross-cutting authorities shall be contained in the application package;
 - (b) Maintenance of accounting records in accordance with "generally accepted government accounting standards." These standards are defined as, but not limited to, those contained in the United States General Accounting Office (GAO) publication *"Standards for Audit of Governmental Organizations, Programs, Activities, and Functions"*;
 - (c) Demonstration of applicant's legal ability to provide a dedicated source of revenue and guarantee the repayment of their obligations to the fund from that dedicated source. Dedicated sources of revenue could be special assessments, general taxes, or general obligation bonds, revenue bonds, user charges, rates, fees, or other sources; and
 - (d) Submission of construction completion report(s) for all project components and other documentation required under chapter 246-290 WAC.
- (3) Amendments to the loan agreement must be approved by DOH, the board, and the loan recipient.
 - (a) Amendments to the loan agreement are required when there is a:
 - (i) Significant change to the project's original ranked application and project scope of work; or
 - (ii) Need for a time extension beyond the time cited in the original loan agreement to complete project activities.
 - (b) Amendments to the loan agreement are not required when adjustments are made to reconcile minor differences between the contract and the final project for project close out.
- (4) CTED, or another authorized auditor at CTED's discretion, shall audit the financial assistance agreement and records.

- (5) If the borrower fails to comply with the terms of the loan under WAC [246-296-150](#), or fails to use the loan proceeds only for those activities identified in the loan, CTED may terminate the agreement in whole or in part at any time. CTED shall promptly notify the borrower in writing of its determination to terminate, the reason for such termination, and the effective date of the termination. Upon termination of the loan agreement, CTED shall request that the entire remaining balance of the loan together with any interest accrued, be paid immediately.

[Statutory Authority: RCW 70.119A.170. 01-21-137, § 246-296-150, filed 10/24/01, effective 11/24/01.]

WAC 246-296-160 Dispute resolution.

- (1) If an applicant does not agree with the DOH decision regarding application eligibility, the applicant may request reconsideration of the decision to the director of the DOH division of drinking water. Requests for reconsideration must be in writing and received within ten working days of the date DOH notifies the applicant of the decision.
- (2) If an applicant does not agree with the DOH decision regarding priority ranking of the application, the applicant may submit comments to DOH as part of the public review of the draft intended use plan.
- (3) If an applicant does not agree with board staff recommendations regarding the loan application section submitted, the applicant may request a review of the decision by the board. Requests for review must be in writing and received by the board fourteen calendar days in advance of the board meeting.

[Statutory Authority: RCW 70.119A.170. 01-21-137, § 246-296-160, filed 10/24/01, effective 11/24/01.]

WAC 246-296-170 State environmental review process.

- (1) Federal law requires that Washington state follow a state environmental review process (SERP) for projects receiving DWSRF assistance. The purpose of the SERP is to identify any significant impact to the environment that may be caused by the implementation of a DWSRF project. This review must be done in compliance with the National Environmental Policy Act (NEPA) or the State Environmental Policy Act (SEPA) and any other applicable environmental statutes and regulations.
- (2) CTED is designated as the lead agency for SERP. CTED shall provide basic guidance to the loan recipient to meet the requirements of this process. Details regarding SERP shall be included in the application package.

[Statutory Authority: RCW 70.119A.170. 01-21-137, § 246-296-170, filed 10/24/01, effective 11/24/01.]

WAC 246-296-180 Obligation for systems to comply if assistance is not obtained.

The inability or failure of any public water system to receive assistance from the DWSRF program, or any delay in obtaining assistance, does not alter the obligation of the water system to comply in a timely manner with all applicable federal, state, and local drinking water standards.

[Statutory Authority: RCW 70.119A.170. 01-21-137, § 246-290-180, filed 10/24/01, effective 11/24/01.]

WAC 246-296-190 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected.

[Statutory Authority: RCW 70.119A.170. 01-21-137, § 246-296-190, filed 10/24/01, effective 11/24/01.]